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Keith A. Ovitt and Proposed Lead Counsel for the Class*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

FRED JEAN, Individually and on
Behalf of All Others Similarly
Situating,

Plaintiff,

v.

STEC, INC., MANOUCH
MOSHAYEDI and MARK
MOSHAYEDI,

Defendants.

Case No. 09-CV-1304 JVS (MLGx)

CLASS ACTION

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION BY
KEITH A. OVITT FOR
APPOINTMENT OF LEAD
PLAINTIFF AND APPROVAL
OF LEAD PLAINTIFF'S
SELECTION OF LEAD
COUNSEL, AND
CONSOLIDATION OF ALL
RELATED ACTIONS**

Date: February 8, 2010
Time: 1:30 p.m.
Courtroom: 10C
Judge: Hon. James V. Selna

(caption continued on subsequent page)

HADI SAKHAI, Individually and on
Behalf of All Others Similarly
Situating,

Plaintiff,

v.

STEC, INC., MANOUCH
MOSHAYEDI, MARK
MOSHAYEDI, RAYMOND D.
COOK, J.P. MORGAN
SECURITIES INC., DEUTSCHE
BANK SECURITIES INC.,
BARCLAYS CAPITAL INC., and
OPPENHEIMER & CO. INC.,

Defendants.

Case No. 09-CV-1306 JVS (MLGx)

FRED GREENWALD, Individually
and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

STEC, INC., MANOUCH
MOSHAYEDI, and MARK
(MERHDAD) MOSHAYEDI,

Defendants.

Case No. 09-CV-1315 JVS (MLGx)

DANIEL MUNTER, Individually
and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

STEC, INC., MANOUCH
MOSHAYEDI, MARK
MOSHAYEDI and RAYMOND D.
COOK,

Defendants.

Case No. 09-CV-1320 JVS (MLGx)

MARCEL WEINBERGER,
Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

STEC, INC., MANOUCH
MOSHAYEDI, MARK
MOSHAYEDI and RAYMOND D.
COOK,

Defendants.

Case No. 09-CV-1460 JVS (MLGx)

JONATHAN FISCHER, Individually
and on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

STEC, INC., MANOUCH
MOSHAYEDI, MARK
MOSHAYEDI and RAYMOND D.
COOK,

Defendants.

Case No. 09-CV-8536 JVS (MLGx)

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Keith A. Ovitt respectfully submits this memorandum of law in support of his motion for: (i) appointment as Lead Plaintiff pursuant to Section 27(a)(3)(B) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77z-1(a)(3)(B) and Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”); (ii) approval of his selection of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) as Lead Counsel for the Class; and (iii) consolidation of all related securities class actions pursuant to Rule 42(a) of the Federal Rules of Civil Procedure.

I. PRELIMINARY STATEMENT

These class action lawsuits arise from violations of the federal securities laws by STEC, Inc. (“STEC” or the “Company”), certain of its officers and directors and the underwriters of the Company’s August 6, 2009 stock offering (the “Offering”) (collectively, “Defendants”). During the period from June 16, 2009 through November 3, 2009, inclusive (“Class Period”), Defendants disseminated materially false and misleading information to investors related to the Company’s business and operations, specifically relating to the sales of and demand for STEC’s solid-state hard drive (“SSD”) and the ZeusIOPS SSD (“Zeus”), in particular. Defendants’ misstatements and omissions during the Class Period artificially inflated the price of STEC’s publicly traded securities and enabled the Defendants to complete the Offering. When the true facts about Zeus and the Company’s SSD business were revealed, the price of those securities plummeted, causing substantial damage to the Class.

Mr. Ovitt purchased STEC stock on the open market during the Class Period and on the Offering. By virtue of his substantial investment in STEC during the Class Period and the loss of approximately \$1.7 million he suffered as a result of Defendants’ misconduct, Mr. Ovitt believes that he has the largest financial interest

1 in the relief sought in these actions.¹ Mr. Ovitt is, therefore, presumptively the
2 “most adequate plaintiff” as defined by the PSLRA and should be appointed Lead
3 Plaintiff for these actions.

4 Mr. Ovitt satisfies the requirements of Rule 23 of the Federal Rules of Civil
5 Procedure as an adequate class representative with claims typical of the other Class
6 members. Indeed, because he purchased STEC stock on the Offering and on the
7 open market during the Class Period, Mr. Ovitt has standing to assert all the claims
8 that have been pleaded in these cases, under both the Securities Act and the
9 Exchange Act, and he is therefore able to represent the interests of the entire Class.
10 Mr. Ovitt fully understands the Court-appointed Lead Plaintiff’s duties and
11 responsibilities to the Class under the PSLRA, and is willing and able to undertake
12 the responsibility and work entailed in being Lead Plaintiff to ensure the vigorous
13 prosecution of this action. Mr. Ovitt is, moreover, a sophisticated investor and is
14 fully capable of supervising counsel in complex securities litigation. Accordingly,
15 Mr. Ovitt respectfully submits that he should be appointed Lead Plaintiff.

16 Mr. Ovitt also moves to consolidate all related actions pursuant to Rule 42(a)
17 of the Federal Rules of Civil Procedure as each action involves common questions
18 of law or fact relating to Defendants’ untrue statements about STEC’s business and
19 operations and, in particular, Zeus and SSD, during the Class Period.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 STEC, based in Santa Ana, California, designs and manufactures computer
22 memory solutions, including SSDs. The Company’s products are sold to
23 manufacturers, known as original equipment manufacturers or “OEMs,” which
24

25
26 ¹ A copy of Mr. Ovitt’s Certification is attached as Exhibit A to the Declaration of
27 Blair A. Nicholas (“Nicholas Decl.”). This Certification sets forth Mr. Ovitt’s
28 transactions in STEC securities during the Class Period. In addition, a chart setting
forth Mr. Ovitt’s losses in STEC securities is attached as Exhibit B to the Nicholas
Decl.

1 incorporate STEC components into products sold to end users. STEC specializes
2 in SSDs, which are faster and use less power than traditional hard drives. During
3 the Class Period, STEC and its senior officers, Defendants Manouch Moshayedi,
4 the Company's founder and Chief Executive Officer, Mark Moshayedi, the
5 Company's Chief Operating Officer, and Raymond D. Cook, the Company's Chief
6 Financial Officer, misled investors about the prospects for STEC's SSD products,
7 and Zeus in particular.

8 Specifically, these defendants represented that the Company's SSD
9 products, including Zeus, were quickly being adopted by end-users and that those
10 STEC products did not face competition. Those misrepresentations propelled the
11 price of STEC stock above \$41 per share during the Class Period, and allowed the
12 Defendants to conduct the Offering on August 6, 2009. On the Offering,
13 defendants Manouch and Mark Moshayedi sold 9 million shares of STEC stock at
14 \$31 per share, pursuant to a registration statement and prospectus that contained
15 those same untrue statements about the Company's business and operations.

16 On November 3, 2009, the Company revealed the truth about the demand for
17 Zeus, when it disclosed that the largest customer for that product – EMC – held so
18 much inventory that STEC would be unable to meet expectations. This disclosure
19 shocked investors, and caused the price of STEC stock to fall over 30% to close
20 near \$14 per share on November 4, 2009.

21 On November 6, 2009, two class action complaints were filed in this District
22 on behalf of STEC investors. The first filed action, *Jean v. STEC, Inc.*, No. 09
23 Civ. 1304, asserts claims under the Exchange Act against STEC, Manouch
24 Moshayedi and Mark Moshayedi, on behalf of investors who purchased STEC
25 securities during the period from August 3, 2009 through November 3, 2009. The
26 second filed action, *Sakhai v. STEC, Inc.*, No. 09 Civ. 1306, also asserts claims
27 under the Exchange Act against STEC, Manouch Moshayedi, Mark Moshayedi as
28 well as Raymond D. Cook, but expanded the proposed class period to begin on

June 16, 2009. In addition, the *Sakhai* complaint asserts claims under the Securities Act against those defendants as well as the underwriters of the Offering: J.P. Morgan Securities Inc., Deutsche Bank Securities Inc., Barclays Capital Inc. and Oppenheimer & Co. Inc. Subsequently, four additional complaints were filed in this District asserting substantially similar claims under the Exchange Act. On November 6, 2009, a notice was published alerting the Class to the pendency of the *Jean* case and the January 5, 2010 deadline to seek appointment as Lead Plaintiff. On November 9, 2009, a second notice was published alerting the Class to the pendency of the *Sakhai* case, the longer class period for Exchange Act claims asserted therein, and the fact that claims had been asserted under the Securities Act on behalf of investors who purchased on the Offering. Consistent with the requirements of the PSLRA, Mr. Ovitt has timely filed this motion for appointment as Lead Plaintiff within 60 days from the publication of the first notice of pendency.

III. ARGUMENT

A. Keith A. Ovitt Should Be Appointed Lead Plaintiff

Mr. Ovitt respectfully submits that he should be appointed Lead Plaintiff because he is the movant “most capable of adequately representing the interests of class members.” 15 U.S.C. § 77z-1(a)(3)(B)(i), 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA establishes a presumption that the “most adequate plaintiff” is the movant that “has the largest financial interest in the relief sought by the class” and “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I), 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002); *Cunha v. Hansen Natural Corp.*, No. 08 Civ. 01249, 2009 WL 2029797, at *1 (C.D. Cal. July 13, 2009); *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659 (C.D. Cal. 2005).

1 **1. Mr. Ovitt Believes That He Has The Largest**
2 **Financial Interest In The Relief Sought By The Class**

3 Mr. Ovitt is presumptively the most adequate plaintiff for the reasons set
4 forth below and because he believes that he has the largest financial interest in the
5 relief sought by the Class. As a result of the Company's corrective disclosures and
6 the consequential stock price decline, Mr. Ovitt suffered approximately \$1.7
7 million in losses. *See Autobytel*, 226 F.R.D. at 666 (comparing losses of
8 competing lead plaintiff movants). Given the magnitude of his losses, Mr. Ovitt
9 believes that he has the largest financial interest of any proposed Lead Plaintiff.

10 **2. Mr. Ovitt Otherwise Satisfies**
11 **The Requirements Of Rule 23**

12 Mr. Ovitt should be appointed Lead Plaintiff because he also satisfies the
13 requirements of Rule 23 of the Federal Rules of Civil Procedure. On a motion to
14 serve as Lead Plaintiff, the movant need only make "a preliminary showing of
15 typicality and adequacy." *Ferrari v. Gisch*, 225 F.R.D. 599, 606 (C.D. Cal. 2004)
16 (citing *Erikson v. Cornerstone Propane Partners LP*, No. 03-2522, 2003 WL
17 22232387, at *3 (N.D. Cal. Sept. 15, 2003); *see also Cavanaugh*, 306 F.3d at 730;
18 *Autobytel*, 226 F.R.D. at 666 ("A wide ranging analysis is not appropriate' to
19 determine whether [the movant] has made a prima facie showing that he satisfies
20 the requirements of Rule 23, and 'should be left for consideration on a motion for
21 class certification.'"), quoting *Fischler v. AmSouth Bancorp.*, No. 96 civ. 1567,
22 1997 WL 118429, at *2 (M.D. Fla. Feb. 6, 1997). Mr. Ovitt satisfies both
23 requirements in this case.

24 Mr. Ovitt's claims are typical of the claims of other Class members. The
25 typicality requirement is satisfied when the proposed Lead Plaintiff has (i) suffered
26 the same injuries as class members; (ii) as a result of the same course of conduct;
27 and (iii) its claims are based on the same legal issues. *See Armour v. Network*
28 *Assoc., Inc.*, 171 F. Supp. 2d 1044, 1050 (N.D. Cal. 2001). Mr. Ovitt's claims and

1 injuries in this action arise from the very same course of misconduct by Defendants
2 as those of the other Class members – *i.e.*, the artificial inflation caused by
3 Defendants’ false and misleading statements and consequent market correction of
4 the price of STEC’s publicly traded securities in response to the corrective
5 disclosures. *See Autobytel*, 226 F.R.D. at 667. Significantly, because Mr. Ovitt
6 purchased STEC stock on the Offering as well as on the open market during the
7 Class Period, he is typical of *all* members of the Class and can therefore represent
8 the entire Class.

9 Mr. Ovitt likewise satisfies the adequacy requirement of Rule 23.
10 “Representation is ‘adequate’ when the representative’s interests are not
11 antagonistic to the interests of absent class members, it is unlikely that the action is
12 collusive, and counsel for the class is qualified and competent.” *Ruland v.*
13 *InfoSonics*, No. 06-cv-1231, 2006 WL 3746716, at *6 (S.D. Cal. Oct. 23, 2006).
14 Mr. Ovitt is adequate to represent the Class because his interests are perfectly
15 aligned with those of the other Class members and are not antagonistic in any way.
16 *See Autobytel*, 226 F.R.D. at 667. As an investor who purchased STEC stock at
17 artificially inflated prices and who suffered substantial losses upon the Company’s
18 corrective disclosures, Mr. Ovitt has an identity of interest with his fellow Class
19 members. There are no facts suggesting that any actual or potential conflict of
20 interest or other antagonism exists between Mr. Ovitt and other Class members.

21 Mr. Ovitt also has a significant interest in the outcome of the case to ensure
22 vigorous advocacy. *See, e.g., Ruland*, 2006 WL 3746716, at *6 (finding adequate
23 a proposed Lead Plaintiff that “has [adequate] incentive to prosecute this action
24 vigorously and states that he is willing to serve as a representative on behalf of the
25 class”). As set forth above, Mr. Ovitt suffered substantial losses on his investment
26 in STEC sufficient to ensure a commitment to the vigorous prosecution of this
27 lawsuit. Mr. Ovitt has submitted a Certification affirming his understanding of the
28 duties owed to Class members through his commitment to oversee the prosecution

1 of this Class action. *See* Nicholas Decl., Exhibit A. Through that Certification,
2 Mr. Ovitt accepts the fiduciary obligations he will assume if appointed Lead
3 Plaintiff in this action. *See Autobytel*, 226 F.R.D. at 668.

4 **B. The Court Should Approve Mr. Ovitt's**
5 **Selection Of Bernstein Litowitz As Lead Counsel**

6 The Court should approve Mr. Ovitt's choice of the law firm of Bernstein
7 Litowitz to serve as Lead Counsel. Pursuant to Section 27(a)(3)(B)(v) of the
8 Securities Act, 15 U.S.C. § 77z-1(a)(3)(B)(v), and Section 21D(a)(3)(B)(v), 15
9 U.S.C. § 78u-4(a)(3)(B)(v), the Lead Plaintiff is to select and retain lead counsel to
10 represent the Class, subject to Court approval. Mr. Ovitt has selected and retained
11 the law firm of Bernstein Litowitz.

12 Bernstein Litowitz is among the preeminent securities class action law firms
13 in the country, having been appointed sole or co-lead counsel in numerous
14 complex securities class actions in this District and around the country. *See, e.g.,*
15 Bernstein Litowitz's Firm Biography attached as Exhibit D to the Nicholas Decl.
16 Bernstein Litowitz served as co-lead counsel in *In re WorldCom, Inc. Securities*
17 *Litigation* (S.D.N.Y.), in which settlements totaling in excess of \$6 billion – one of
18 the largest recoveries in securities class action history – were obtained for the
19 class. Bernstein Litowitz also served as co-lead counsel in *In re McKesson HBOC,*
20 *Inc. Securities Litigation* (N.D. Cal.), in which Bernstein Litowitz helped obtain a
21 \$960 million settlement from the issuer defendant – the single largest settlement of
22 any securities class action within the courts of the Ninth Circuit – and an additional
23 \$72 million from the defendant auditor and \$10 million from the investment
24 banking defendant. Bernstein Litowitz is currently serving as lead counsel in the
25 *New Century* securities class action and, since the enactment of the PSLRA,
26 Bernstein Litowitz has served as lead or co-lead counsel in numerous other
27 successful securities class actions in federal district courts within the Ninth Circuit,
28 including *In re International Rectifier Corp. Securities Litigation* (C.D. Cal.); *In re*

Gemstar-TV Guide Int'l Securities Litigation (C.D. Cal.), *In re Legato Systems Inc. Securities Litigation* (N.D. Cal.), and *In re Network Assoc. Securities Litigation* (N.D. Cal.). Other recent cases in which Bernstein Litowitz has been recognized as an appropriate lead or co-lead counsel since the passage of the PSLRA include, for example, *In re Bank of America Securities Litigation* (S.D.N.Y.) and *In re Refco, Inc. Securities Litigation* (S.D.N.Y.). Accordingly, the Court should approve Mr. Ovitt's selection of Bernstein Litowitz as Lead Counsel for the Class.

C. The Court Should Consolidate The Related Actions

Six related actions are presently pending before this Court. The related actions involve claims on behalf of Class members who purchased STEC securities on the open market during the Class Period, or on the Offering. All of the related actions assert essentially the same claims brought on behalf of purchasers of STEC securities for alleged violations of Sections 10(b) and 20(a) of the Exchange Act and Sections 11, 12(a)(2) and 15 of the Securities Act. All of the related actions name essentially the same defendants and allege substantially identical factual and legal issues. Specifically, the pending actions are:

CASE	NUMBER	DATE FILED
<i>Jean v. STEC, Inc. et al.</i>	09-cv-01304	11/6/2009
<i>Sakhai v. STEC, Inc. et al.</i>	09-cv-01306	11/6/2009
<i>Greenwald v. STEC, Inc. et al.</i>	09-cv-01315	11/9/2009
<i>Munter v. STEC, Inc. et al.</i>	09-cv-01320	11/10/2009
<i>Weinberger v. STEC, Inc. et al.</i>	09-cv-08536	11/19/2009
<i>Fischer v. STEC, Inc. et al.</i>	09-cv-01460	12/11/2009

Rule 42 of the Federal Rules of Civil Procedure provides that "if actions pending before the court involve a common question of law or fact, the court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2). The PSLRA requires that the question of consolidation be decided prior to the determination of the

1 appointment of Lead Plaintiff. *See, e.g., Mohanty v. BigBand Networks, Inc.*, No.
2 07-5101, 2008 WL 426250, at *2 (N.D. Cal. Feb. 14, 2008). Under the PSLRA:

3 If more than one action on behalf of a class asserting substantially the
4 same claim or claims arising under this title has been filed, and any
5 party has sought to consolidate those actions for pretrial purposes or
6 for trial, the court shall not make the determination [of appointment of
7 lead plaintiff under §21D(a)(3)(B)] until after the decision on the
8 motion to consolidate is rendered.

9 15 U.S.C. § 77z-1(a)(3)(B)(ii) and 15 U.S.C. § 78u-4(a)(3)(B)(ii).

10 Consolidation pursuant to Rule 42 is proper and routinely granted in actions
11 such as this, where there are common questions of law and fact. *See, e.g.,*
12 *Eichenholtz v. Verifone Holdings, Inc.*, No. 07-6140, 2008 WL 2095767, at *2
13 (N.D. Cal. May 14, 2008); *Mohanty*, 2008 WL 426250, at *2; *Richardson v. TVIA,*
14 *Inc.*, No. 06-6304, 2007 WL 1129344, at *2 (N.D. Cal. Apr. 16, 2007). Courts
15 have recognized that class action shareholder suits are particularly suited to
16 consolidation pursuant to Rule 42 because their unification expedites pretrial
17 proceedings, reduces case duplication, avoids the harassment of parties and
18 witnesses from inquiries in multiple proceedings, and minimizes the expenditure of
19 time and money by all persons concerned. *See, e.g., Miller v. Ventro Corp.*, No.
20 01-1287, 2001 WL 34497752, at *2 (N.D. Cal. Nov. 28, 2001); *In re Equity*
21 *Funding Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 176 (C.D. Cal. 1976).
22 Consolidating multi-shareholder class action suits not only simplifies pretrial and
23 discovery motions, class action issues, and clerical and administrative management
24 duties, but also reduces the confusion that may result from prosecuting related
25 class actions separately. *Id.*

26 Accordingly, the Court should enter an Order that consolidates the related
27 cases and all future related cases with the instant action.
28

1 **IV. CONCLUSION**

2 For all of the foregoing reasons, Mr. Ovitt respectfully requests that the
3 Court: (i) appoint Mr. Ovitt as Lead Plaintiff pursuant to the PSLRA; (ii) approve
4 his selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for
5 the Class; (iii) consolidate all related actions; and (iv) grant such other and further
6 relief as the Court may deem just and proper.

7
8 Dated: January 5, 2010

Respectfully submitted,

9 BERNSTEIN LITOWITZ BERGER
10 & GROSSMANN LLP

11
12 /s/ Blair A. Nicholas

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24 *Attorneys for Proposed Lead Plaintiff Keith*
25 *A. Ovitt and Proposed Lead Counsel to the*
26 *Class*
27
28